

EXHIBIT LL

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CARYN DEVINS STRICKLAND,)

Plaintiff,)

-vs-) Case No. 1:20-cv-00066

UNITED STATES, et al.,)

Defendants.)

*** CONFIDENTIAL ***

SUBJECT TO PROTECTIVE ORDER

ECF NO. 183

DEPOSITION OF JAMES N. ISHIDA

9:05 a.m. to 5:47 p.m.

April 13, 2023

Richmond, Virginia

Job No. 49661

REPORTED BY: Julia A. Bammel, RPR, CSR

1 Deposition of JAMES N. ISHIDA, taken and
2 transcribed on behalf of the Plaintiff, by and before
3 Julia A. Bammel, RPR, CSR, Notary Public in and for the
4 Commonwealth of Virginia at large, pursuant to the
5 Federal Rules of Civil Procedure and by Notice to Take
6 Deposition, commencing at 9:05 a.m., April 13, 2023, at
7 140 Virginia Street, Richmond, Virginia.

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25 ALSO PRESENT: Caryn Strickland (via videoconference)

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2

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1 EDR plan?

2 A In what context?

3 Q In the context that you were talking about.
4 You said that you could see that people might think you
5 had more authority than you did. So whatever context
6 you were talking about, I would like to know about.

7 A Okay. Well, then let's say that -- if --
8 say an employee came to me with a concern about they
9 weren't -- they weren't promoted, say, and I would say,
10 "Okay. Let's talk about why you feel that way," and
11 then we'll kind of get into the substance of why
12 they -- you know, why they feel that that is a concern.

13 But, ultimately, I have no authority to tell
14 the employing office that "You need to promote this
15 person," because that's not within -- I don't have that
16 authority. The unit executive has that authority.

17 Q Is the unit executive the only person who
18 has that authority, specifically with respect to the
19 matter that you just mentioned?

20 A In terms of, say, a promotion of the
21 employee? I would think that's the case.

22 Q Does the Chief Judge have that authority?

23 A To order the employing office to promote
24 somebody?

25 Q (Nodding head.)

1 A No, I don't believe so.

2 Q And just to clarify, you mean, with your
3 previous answer, under the EDR plan?

4 Would you like me to rephrase?

5 A Yeah, please.

6 MS. SUK GERSEN: Can you read back the
7 last ...

8 (Requested record read by the stenographer.)

9 BY MS. SUK GERSEN:

10 Q Under the EDR plan, does anyone have
11 authority to order a personnel action as a resolution
12 or a remedy?

13 A Under the EDR plan, the EDR plan would give
14 the presiding judicial officer -- if the proceeding
15 went to a formal hearing, I believe that the EDR plan
16 gives the presiding judicial officer that authority.

17 Q And who was the presiding judicial officer?

18 A In --

19 MR. KOLSKY: Objection. Vague.

20 BY MS. SUK GERSEN:

21 Q Who was the presiding judicial officer in
22 the Strickland matter?

23 A There was no presiding judicial officer in
24 the Strickland matter because that never went to a
25 formal complaint stage.

1 arrangement where Heather, you know, supports all the
2 offices in the district including the Clerk's Office.
3 And so when I had asked Frank Johns for a
4 recommendation, he recommended Heather.

5 I had also reached out to my HR manager, or
6 HR ACE, Kim Llewellyn, for a recommendation because
7 that's her -- you know, that's in her field. And she
8 also agreed that Heather Beam would be terrific.

9 Now, I might have -- you know, I think -- I
10 think those were the two people that I reached out to
11 to make my decision on the selection of Heather Beam.

12 Q The two people being Frank Johns and Kim
13 Llewellyn?

14 A That's correct.

15 Q What did you say to Frank Johns when you
16 reached out to him about this?

17 A I said I needed somebody that, you know,
18 was, first, in HR, could handle a highly confidential,
19 highly sensitive matter, and if he had any
20 recommendations for me.

21 Q Did you tell him who was involved in terms
22 of the parties?

23 A No.

24 Q Did you mention that it was something having
25 to do with the Public Defender's Office?

1 A I can't -- I can't remember, but I don't
2 believe I did because, obviously, the one thing I did
3 not want to do was breach any confidentiality.

4 Q You would not, at the time, have had reason
5 to know whether Heather Beam was involved with the
6 facts of the matter that were alleged?

7 A No. I would not have reason to know that,
8 because, again, she -- I think, you know, she's
9 properly considered a probation office employee, so she
10 had no -- as far as I know, had no connection with the
11 Federal Public Defender's Office.

12 I mean, she would be familiar with it
13 because, again, they -- that district had a shared
14 services arrangement where, you know, the idea being
15 that each individual office in the district did not
16 need to have its own HR person but could borrow the
17 services of someone in another office, which is the
18 case here.

19 So Heather, you know, was, and I think still
20 is, a probation office employee but serves the entire
21 district, including the probation office -- I'm
22 sorry -- the Federal Public Defender's Office.

23 Q You wouldn't have known whether Heather Beam
24 was friends with the accused person in the case; is
25 that right?

1 A Right. I think that's -- I think that's
2 right.

3 Q And to your knowledge, neither would Frank
4 Johns?

5 A To my knowledge, that's correct.

6 Q So what was Heather's involvement --
7 (Conferring with co-counsel.)

8 THE WITNESS: Professor, do you mind --
9 before you ask the question, do you mind if we take,
10 like, five minutes? It's getting a little warm.

11 MS. SUK GERSEN: Of course. Of course.
12 (Break in proceedings.)

13 MS. SUK GERSEN: Okay. Thank you for
14 suggesting the break. And would it be all right if we
15 went until 12:30 before lunch?

16 MR. KOLSKY: That's fine with me.

17 THE WITNESS: Yeah, sure.

18 BY MS. SUK GERSEN:

19 Q Okay. So can you tell us who is Nancy
20 Dunham?

21 A You know, I don't know. I've heard the
22 name. I think she's -- she was the Fair Employment
23 Practices Office. I couldn't tell you exactly.

24 Q At what stage did you alert Chief Judge
25 Gregory of the Chapter IX EDR matter?

1 A I think right away. I couldn't tell you
2 specifically, but the requirement is that the Chief
3 Judge and the unit executive be notified promptly,
4 so ...

5 Q And do you think that that meant before
6 September 10th, 2018?

7 A Yes.

8 Q I'm going to hand you these -- hand you this
9 document which I'm going to mark as Exhibit 3.

10 MR. KOLSKY: Do you have an extra copy that
11 I could use?

12 MS. SUK GERSEN: Yes.

13 (Plaintiff's Exhibit 3 marked.)

14 BY MS. SUK GERSEN:

15 Q If you could look that over.

16 Does that look like an accurate e-mail that
17 you sent at the top of US-2558?

18 A It does look accurate.

19 Q The e-mail was from August 15, 2018. Does
20 that seem right?

21 A Generally, I guess -- I guess that seems
22 right.

23 Q And as we -- as you discussed before, this
24 would have been weeks before Ms. Strickland filed her
25 EDR Chapter IX matter?

1 A Uh-huh. Yes.

2 Q Okay. So can you -- do you recall e-mailing
3 Chief Judge Gregory and saying, as here, that Nancy
4 Dunham was interfering with an EDR matter?

5 A I'm sorry. Can you say that again?

6 Q Do you recall telling Chief Judge Gregory
7 that Nancy Dunham was interfering with an EDR matter?

8 A Well, I do recall this e-mail where I
9 alerted him to that concern. I don't recall
10 specifically an oral conversation.

11 Q Uh-huh. So can you tell me what you meant
12 in this e-mail to Chief Judge Gregory about a
13 disturbing incident? What did you mean by "disturbing
14 incident"?

15 A Well, I think, if I remember correctly, I
16 received a call from Mr. Martinez, who had told me
17 about contact that he had had with various, you know,
18 individuals at the AO, and he -- Mr. Martinez had said
19 that these individuals had basically told him, "Okay.
20 You need to do a number of things. You need to do
21 this. You need to do this. You need to do this," all
22 involving the plaintiff.

23 And Mr. Martinez felt very uncomfortable
24 about that, about having the Administrative Office tell
25 him what he needed to do in this particular case. And

1 so Mr. Martinez raised that with me, and Mr. -- and he
2 was -- he was very upset about that and very concerned
3 about that, as was I, and that's why I had raised it
4 with Chief Judge Gregory. But I prefaced it by saying,
5 it appears that there may be outside interference. I
6 mean, I was just going off of what Mr. Martinez had
7 relayed to me.

8 Q Can you point me to where you said, "it
9 appears"?

10 A If you look at the second paragraph, that
11 first sentence, "It appears that the head of the" --
12 (Court reporter request for repeat.)

13 THE WITNESS: I was mumbling. I was
14 mumbling. "It appears that the head of the AO's Fair
15 Employment Practices Office, Nancy Dunham, tried to
16 obstruct an ongoing Fourth Circuit EDR investigation."
17 BY MS. SUK GERSEN:

18 Q So you alerted Chief Judge Gregory about
19 this appearance. What basis did you have for believing
20 that there was this appearance?

21 A Again, I just was using what I heard from
22 Mr. Martinez.

23 Q Anyone else? Just Mr. Martinez?

24 A I believe -- I believe that's correct. I
25 don't -- I don't know. I mean, there were a number of

1 individuals at the Administrative Office that were --
2 had been -- had been involved. I don't know -- I don't
3 know if I had heard from anyone else. I don't think
4 so. I think it was just when Mr. Martinez had called
5 me and was raising those concerns.

6 Q And did you talk to Nancy Dunham before
7 writing this e-mail?

8 A No, I did not. I did not.

9 Q Did you talk to anyone else at the AO about
10 Mr. Martinez's allegations?

11 A I think at some point I reached out to Lee
12 Ann Bennett, who is the Deputy Director, and I might
13 have even spoke to the AO Director at the time, James
14 Duff.

15 Q What did you believe at the time that you
16 wrote this e-mail that Nancy Dunham may have done to
17 obstruct an ongoing Fourth Circuit EDR investigation?

18 A Well, again, going off of what Mr. Martinez
19 told me, and in describing kind of what had happened,
20 he had also added that he felt pressured to do certain
21 things that the Administrative Office wanted him to do.

22 They were -- I think the way it was coming
23 across is the AO was basically ordering Tony to, you
24 know, essentially give the plaintiff what she was
25 asking for.

1 Q In this e-mail, you describe Nancy Dunham as
2 the AO's Fair Employment Practices Offices head.

3 A Right. In the e-mail, that's what I
4 referred her to -- refer to her as.

5 Q So did you believe it was inappropriate for
6 the Fair Employment Office's -- Fair Employment
7 Practices Office head to advise Mr. Martinez about what
8 he ought to do with respect to Ms. Strickland?

9 A Well, I don't think it came across as
10 advising Mr. Martinez. I think it came across as a
11 directive, that you shall do this and you shall do
12 that. And I think that -- I found that to be -- if it
13 was true, I found that to be inappropriate.

14 Q So it wouldn't have been inappropriate if
15 she advised with respect to exactly the things you
16 described?

17 A Well, I think I would be concerned because
18 these are confidential matters, and I would be
19 concerned about other people knowing what was going on.

20 Q So what do you recall of the conversation
21 you had with Lee Ann Bennett?

22 A I think it was raising -- well, I just
23 wanted to raise with her what had happened and how --
24 you know, what I had heard from Mr. Martinez. Because,
25 again, I was just hearing Mr. Martinez's version of it,

1 and I wanted to speak to somebody at the AO in
2 authority who could, you know, help me figure out what
3 exactly was going on.

4 Q Uh-huh. So what was Mr. Martinez's version
5 of what had been going on?

6 A Well, again, I think from what I remember of
7 the conversation with Tony, was he felt pressured and
8 threatened to take certain action involving the
9 plaintiff, because what he was hearing from various,
10 you know, individuals at the Administrative Office was,
11 "You have to do this. You have to take this action.
12 You have to" -- you know, it was basically they were
13 ordering him to do certain things.

14 Q Did the AO have authority to do that, to
15 order him to do those things?

16 A At the time, I thought not, because -- and
17 that's why I thought it was inappropriate for them to
18 be ordering him to do those things. I can't remember
19 specifically what he was being asked to do, but I
20 remember thinking that was not appropriate, which is
21 why I raised it with the -- with Lee Ann Bennett and
22 others.

23 Q So if they didn't have authority, why did
24 you think it was an order?

25 A Well, again, because of the way Tony had

1 relayed it to me, it wasn't advice. It wasn't
2 guidance. It was a directive, like, "You shall do
3 this. You shall do that." And that's why Mr. Martinez
4 felt pressured, and he also felt that that was
5 inappropriate.

6 Q When you spoke to Lee Ann Bennett about it,
7 did you hear anything different from her than what you
8 heard from Mr. Martinez?

9 A Well, the -- I mean, it was -- these were
10 long conversations, and I don't remember everything
11 that we talked about, but the key takeaway was that
12 Ms. Bennett didn't realize that this was -- well, one,
13 they didn't realize -- I think -- I don't think she
14 realized what had happened.

15 And I think, two, the AO -- well, she didn't
16 understand that this was part of an ongoing Fourth
17 Circuit proceeding, and so she said, "Oh," you know,
18 "had we known that this" -- "there's an ongoing
19 proceeding in the Fourth Circuit, we would not have
20 interfered. So we will let the Fourth Circuit handle
21 these ongoing matters, and we will" -- "we will," you
22 know, "pull back and allow the circuit to conduct
23 whatever it needs to do in handling the ongoing
24 matters."

25 So she told me that she didn't know that

1 that -- that those communications were made to
2 Mr. Martinez, and she didn't know that we had ongoing
3 EDR Chapter IX proceedings playing out in the Fourth
4 Circuit.

5 Q Is there anything that could refresh your
6 recollection about the conversations you had with Lee
7 Ann Bennett about this problem?

8 A Yeah. I'm not -- I'm not sure if I wrote
9 follow-up e-mails, but if I did, that certainly would
10 be helpful.

11 Q So it seems like here you thought that it
12 would have been inappropriate for Nancy Dunham to have
13 done the things that Tony Martinez alleged she did; is
14 that right?

15 A I thought -- if true, I thought it was
16 inappropriate, if she ordered him to take certain
17 actions, yes.

18 Q Do you think something differently now?

19 A I haven't -- I haven't really thought about
20 it, because, again, as you said, I had not spoken to
21 Ms. Dunham, so I don't know what exactly she might have
22 said to Mr. Martinez. All I know is what he had told
23 me.

24 Q Why did you not speak with Ms. Dunham before
25 alerting the Chief Justice as to the appearance that

1 Tony Martinez told you about?

2 A Judge Gregory.

3 Q Sorry.

4 A Well, again, I just wanted to alert him to
5 something so that he knew, roughly about the same time
6 that I did, that this had happened. So I just wanted
7 him to know, you know, that I'd gotten this call from
8 Mr. Martinez and here's what, you know, appears to have
9 happened.

10 (Plaintiff's Exhibit 4 marked.)

11 BY MS. SUK GERSEN:

12 Q Just so you know, at the top it says -- so
13 this is US-614 [sic], and at the top of this document
14 you'll see a date, sent 6/12/2019, but it is not the
15 correct date because, I guess, e-mails must have been
16 forwarded or produced at a certain time. So the
17 correct date is later on.

18 A Right. Right. We had -- I'm sure you know,
19 but it was around that time we were migrating e-mail
20 servers from Lotus to Outlook --

21 Q Yes.

22 A -- so I think there was -- I think that was
23 probably part of that.

24 Q Can you tell us what is happening in this
25 e-mail?

1 Who is Cait Clarke?

2 A Oh, is Cait Clarke part of this e-mail?
3 Maybe I'm looking at the wrong e-mail.

4 Q Later on in the page. Sorry. Sorry. Let's
5 move to -- we're going to get to that one later.

6 (Plaintiff's Exhibit 5 marked.)

7 THE WITNESS: Okay so I'm looking at
8 Exhibit 5?

9 BY MS. SUK GERSEN:

10 Q Yes.

11 A Okay. I'm sorry. Can --

12 Q US-614. So can you walk us through what
13 this e-mail -- what is happening in this e-mail?

14 A Okay. You know, I don't recall this, and
15 even looking at it, it just doesn't ring a bell. But
16 in just kind of reconstructing what I'm reading, it
17 looks like Cait Clarke, who was the chief of the
18 Defender's Services Office at the Administrative Office
19 is telling Nancy Dunham, you know, what you see in the
20 e-mail, and I'm commenting on that.

21 And I will confess, I was -- I think I was a
22 little irritated by the fact that there were all these
23 AO employees weighing in and calling Tony and telling
24 him what he needed to do and what he needed to not do,
25 and I just -- I just felt that that -- I don't think

1 they knew there was an ongoing proceeding, so I think
2 they felt, you know, free to do that, but I was a
3 little -- I think I was -- I think it's fair to say I
4 was a little irritated at what was going on and how it
5 could impact the proceedings that we were handling at
6 the time.

7 Q So you say in this e-mail, "I wonder if
8 she's going to walk back her statement and say she only
9 insisted Caryn telework while this is being worked
10 out."

11 Who is "she"?

12 A I think I was referring to Cait Clarke, and
13 if I recall correctly, I think Cait had essentially
14 ordered Tony to do certain things involving the
15 plaintiff, and, you know, I'm just thinking telework
16 might have been one of those.

17 Q What -- why did you say, "I wonder if she's
18 going to walk back her statement"?

19 A Well, instead of coming across as, "I'm
20 ordering you to do that," she might say, "Well, I was
21 just advising Tony to do that."

22 But the way I understood it from
23 Mr. Martinez was he was getting directives from the AO
24 saying, "You have to do this" and "You have to do
25 that."

1 Q And at the time, you believed that
2 Mr. Martinez was accurately describing what happened?

3 A Again, this was based on what he had told
4 me, and I don't know if this was before or after the
5 conversation I had with Lee Ann Bennett that really
6 clarified things for me.

7 Q So how did Lee Ann Bennett -- how did
8 talking to her clarify things?

9 A Well, again, she made those two takeaway
10 points that, "Oh, I didn't know that these
11 conversations were going on, and I didn't know that the
12 Fourth Circuit had ongoing matters involving this
13 case."

14 Q Did you -- were you worried that the AO
15 employees were interfering with the EDR investigation?

16 A In the sense that they were ordering Tony to
17 do certain things, which I thought was not appropriate
18 given that we've already got proceedings that were
19 designed to address the concerns that Plaintiff was
20 raising.

21 Q What were the proceedings that were already
22 ongoing?

23 A Well, we had the Chapter IX proceeding that
24 the investigation was going, and so we -- I mean, my
25 recollection was the AO was asking Tony to do certain

1 things before even the outcome or what was known -- you
2 know, the outcome of the investigation of what had
3 actually happened. They were just ordering him to take
4 preemptive action and really, you know, that -- I felt
5 that was inappropriate.

6 Q And when you say that the proceeding was
7 already ongoing, do you mean that by then you had
8 already appointed Heather Beam?

9 A Well, again, I can't remember at what point
10 that happened, but I'm looking at the date, and this is
11 August 15th. I mean, by this time, we were -- we
12 were all -- you know, I had already heard about the
13 plaintiff's concerns and complaints, and so -- and
14 that -- and, again, I can't remember at what point I
15 got that, but that would have kicked off Chapter IX,
16 the report of wrongful conduct, which I think that had
17 already started when this was -- you know, when this
18 was -- the AO's involvement was coming to light.

19 Q So was your worry that if the AO were
20 involved, that would be prejudging the outcome before
21 the investigation was complete?

22 A I think that's fair to say.

23 Q Once Tony informed you of the concern about
24 the AO and after you had informed the Chief Judge, why
25 were you continuing to communicate with Tony about

1 Nancy Dunham?

2 A Why was I communicating -- I mean, I'm not
3 quite sure what you mean by that.

4 Q I'm looking at the exhibit in front of you.

5 A Five?

6 Q Yes.

7 A Well, I think -- I think what I wanted to
8 tell Tony -- because he felt pressured to take certain
9 action that the AO was demanding that he take, I wanted
10 to let him know that, hey, look. I had a discussion
11 with the AO.

12 And what I was hoping the AO would agree to,
13 which they did eventually, was they would realize that
14 the actions of certain AO employees was not
15 appropriate, and they needed to stop and let this
16 investigation play out.

17 And so I wanted to let Tony know that, you
18 know, all of these directives that you're being told to
19 do by the AO is something you don't have to follow
20 because these directives -- well, one, I thought it
21 was -- I thought they misunderstood what was going on.
22 They didn't know that we had ongoing investigations.
23 But what I was hoping would happen, and did happen, was
24 once they knew there were ongoing things, that they
25 would immediately stop and pull back.

1 So I wanted to keep Tony in the loop to let
2 him know that "You don't have to follow these
3 directives that are coming from the AO."

4 Q So any resolution that could come out of the
5 EDR matter that was already ongoing, was it your view
6 that it should have waited until the end of the
7 investigation?

8 A So just so I'm clear --

9 Q Uh-huh.

10 A -- so you're talking about Plaintiff's
11 request for Chapter IX and Chapter X?

12 Q Just let me clarify, Mr. Ishida.

13 A Okay.

14 Q We're talking about a period of time before
15 the plaintiff put in any requests under Chapter IX or
16 Chapter X.

17 A Okay.

18 Q Nevertheless, is it your view, I think you
19 said earlier, that the EDR process had already begun?

20 A Well, so that -- I'm clear that the
21 Chapter IX piece of it had already started.

22 Q That's right. That's what I understood you
23 to be saying.

24 So was your concern about the AO
25 interference that any resolution of the matter should

1 wait until the end of the investigation under
2 Chapter IX?

3 MR. KOLSKY: Objection. Misstates prior
4 testimony.

5 BY MS. SUK GERSEN:

6 Q You can answer.

7 A So, again, I think you described it as the
8 AO was almost prejudging the outcome and was directing
9 Mr. Martinez to take certain action, all while the
10 investigation was still ongoing and had not finished.
11 So, yes, that's what I was concerned about.

12 Q So if the investigation had been finished,
13 would you have been concerned about the AO's
14 involvement?

15 A Well, if -- if the AO was continuing to give
16 directives to Mr. Martinez, and they would not have
17 been party -- they would not know what the
18 investigation report revealed, I would still consider
19 that inappropriate because they're making -- they're
20 making -- you know, they're ordering him to do certain
21 things without the benefit of knowing the outcome of
22 what the investigation report said.

23 So I would -- you know, if that had
24 happened, I would still consider that inappropriate.

25 Q So this was prior to -- as we established,

1 and you also said, this was prior to a Chapter IX
2 report being filed by Ms. Strickland. So prior to that
3 period, I understand you to be saying that the AO was
4 acting inappropriately by ordering Mr. Martinez to do
5 anything.

6 A If that was true, I would think that that
7 was inappropriate to order him to do something.

8 Q So who would have had authority to order any
9 kind of resolution of the matter prior to September
10 10th?

11 A Well, again, so keep in mind where we were
12 at at the time. So there was only a Chapter IX
13 proceeding, an investigation going on.

14 Q That's right.

15 A So a report of wrongful conduct tries to --
16 you know, it brings to light, you know, an incident
17 that someone feels, you know, violated certain rights.
18 And so once a report is made and the Chapter IX
19 proceeding, you know, proceeds, then at that -- you
20 know, so then an investigation is conducted.

21 And Chapter IX also says that -- you know,
22 it contemplates potential disciplinary action should
23 the investigation reveal that someone was, you know,
24 culpable of, you know, some kind of misconduct. And so
25 you're talking about at -- only Chapter IX was going on

1 at this time, and so the resolution would have been --
2 we're not even talking -- I mean, we're talking -- the
3 only thing we're focused on is the allegation of
4 wrongdoing and whether or not there is any action
5 that's, you know, appropriate for that particular, you
6 know, report and the conduct of the employee involved.

7 Q Yes. Was the AO recommending discipline as
8 would have been appropriate after a Chapter IX
9 investigation?

10 A To -- again, to my recollection, what I
11 recall Tony saying about what the AO was telling him,
12 it was more about things that Mr. Martinez needed to do
13 with respect no Caryn, you know, putting her on
14 telework, giving her the promotion. I mean, it was --
15 it was things like that that, you know -- and so these
16 would not be natural outcomes of a Chapter IX
17 proceeding.

18 The Chapter IX proceeding is -- you know,
19 it's looking at the allegation of wrongdoing, and if
20 there are -- if the allegations are substantiated, then
21 what actions, you know, are justified with that
22 employee. It doesn't have anything to do with, you
23 know, putting someone on telework or anything like
24 that. It's looking at the conduct -- the alleged
25 wrongful conduct of an employee and what is -- what

1 action would be appropriate to take in that instance.

2 Q So let me make sure that I understand
3 correctly. If you are saying that the Chapter IX
4 investigation is not something that can result in the
5 kinds of resolutions that the AO was ordering Tony to
6 undertake, for example, telework and promotion, things
7 of that nature, then why did you think it would have
8 been interference with the Chapter IX proceeding to
9 have the AO talk to Tony about those kinds of
10 resolutions?

11 A Well --

12 MR. KOLSKY: Objection. Misstates prior
13 testimony.

14 But you can answer.

15 THE WITNESS: Okay.

16 Well, again, I was worried that the AO was
17 ordering Tony to take certain action without -- without
18 understanding whether or not there was even merit or a
19 basis in that, and so, as you said, prejudging the case
20 by just, you know, assuming that what the plaintiff
21 was -- I'm assuming the plaintiff told various AO
22 officials this is what happened, and it seemed like the
23 AO officials accepted what Plaintiff was saying and
24 then, as a result, ordering Mr. Martinez to do certain
25 things.

1 BY MS. SUK GERSEN:

2 Q Was that an interference by the AO with an
3 EDR Chapter IX investigation?

4 A Well, let's -- let's -- so let's suppose
5 that the investigation --

6 Q Please answer the question.

7 A Well, I'm trying to by giving you an
8 example. So let's suppose that the investigation
9 showed that there was no, you know, allegation -- or
10 there was no substance to the claim of sexual
11 harassment. So then there would be no need to separate
12 them. You know, I don't know. We're just thinking
13 about a hypothetical.

14 So in that case, then, if there was no
15 basis -- if there was no misconduct, then any
16 corrective or preventative action taken would -- may
17 not be necessary. So, again, I think you used the term
18 "prejudging." I think I would agree with that, that
19 the AO seemed to have prejudged this case, and as a
20 result of that, was telling Plaintiff [sic] that he
21 needed to do certain things.

22 Q So at that point, before the investigation
23 was complete, it wasn't the AO who could order any
24 remedies. Who in the system could have made an order
25 to, say, separate the parties or to do a transfer to

1 another location or get somebody out of somebody's
2 supervision, those kinds of things of that nature
3 having nothing to do with discipline?

4 A Well, in the -- I guess the scenario you
5 described, I would think that would be the unit
6 executive who would have that control, to make
7 promotions, to, you know, require -- you know, order
8 different work arrangements and that kind of thing.

9 Q Right. So prior to the filing of the
10 Chapter IX complaint, or even while -- I think you're
11 saying that the Chapter IX process was already ongoing.
12 At that point, only Tony Martinez had the authority to
13 resolve this matter by ordering, say, separation of the
14 parties or a transfer or a promotion?

15 A Uh-huh. Right. Which is why, again, the
16 interference from the AO was basically telling him, as
17 the unit executive, "This is what you need to do for
18 staff in your office. These are practices that you
19 have to implement." Which, again, I thought that was
20 overstepping the AO's bounds.

21 Q Did you view it as important that the unit
22 executive maintain that kind of control free of
23 interference from others before and during the
24 investigation?

25 Would you like me to repeat the question?

1 what had you heard about that?

2 A I think just that, that he had testified
3 that there were problems in that office.

4 Q Okay.

5 A But, again, I don't know the specifics.

6 Q Did you know whether judges in the Western
7 District had the need -- saw the need to change the
8 office culture?

9 A I can't speak to that directly. Again, this
10 was before I became Circuit Executive.

11 Q Okay. So you became Circuit Executive in
12 2017?

13 A October of 2017. Yes, that's correct.

14 Q October of 2017. So since that time, I
15 wanted to ask about other EDR complaints that you might
16 have been aware of. So how many other EDR complaints
17 were you aware of during that period since 2017?

18 A Several, and I guess -- I guess I'm hesitant
19 because, again, these are confidential matters, and I
20 want to speak carefully about that because I don't want
21 to, you know, breach any obligation of confidentiality
22 I owe in those particular cases.

23 Q So how many?

24 A I think -- I think there were several. I'm
25 not sure exactly. You know, two or three maybe,

1 something like that.

2 Q Two or three since 2017?

3 A Two or three since then. While I was EDR
4 Coordinator, I was aware of about two or three.

5 Q So were there others who alleged EDR
6 violations against JP Davis?

7 A I think it -- I think it may include
8 JP Davis. I'm just -- I'm just trying to remember. I
9 think there might have been reference, yes.

10 Q What about against Tony Martinez?

11 A Yes. I think -- I think that's fair to say
12 too.

13 Q And that would have been prior to
14 Ms. Strickland's allegations against Tony Martinez?

15 A I remember at least one that was before
16 Ms. -- the pending one, yes.

17 Q At least one against Tony Martinez before
18 Ms. Strickland's?

19 A I think -- I think that's right. To the
20 best of my memory, I think that's right.

21 Q And what about against JP Davis? Prior to
22 Ms. Strickland's complaint, how many would you say were
23 allegations against him.

24 A Yeah. Now, this is -- I guess this is where
25 it gets a little fuzzy for me, because I'm trying to

1 would usually receive the report?

2 A Well, again, that wasn't --

3 MR. KOLSKY: Objection. Asked and answered.

4 MS. SUK GERSEN: I don't recall any answer
5 to that.

6 BY MS. SUK GERSEN:

7 Q Who?

8 A Again, the Chapter IX does not say who
9 receives it, and so because, you know, that wasn't
10 addressed in Chapter IX, I just wanted to make sure
11 that I did -- that I did the right and appropriate
12 thing.

13 Q On US-1390 --

14 A Exhibit 6?

15 MS. SUK GERSEN: This is the latest exhibit
16 that we have?

17 THE COURT REPORTER: The latest exhibit,
18 yes.

19 THE WITNESS: Okay. Okay.

20 BY MS. SUK GERSEN:

21 Q So this is an e-mail from you to Caryn.

22 A Uh-huh. Uh-huh.

23 Q And in the middle of the e-mail you say,
24 "Practically speaking, if Mr. Martinez is disqualified
25 or is otherwise unavailable, then it will be very

1 difficult, if not impossible, to resolve your concerns
2 at this juncture."

3 What did you mean by "difficult, if not
4 impossible, to resolve your concerns"?

5 A Well, I think what I meant was, in the early
6 stages of this process, the plaintiff was asking for
7 certain things, you know, within the unit executive's
8 authority, and if Mr. Martinez was not part of that
9 process, it would be difficult to figure out who and
10 how that -- how the relief the plaintiff was seeking
11 could be done.

12 Again, going back to -- I certainly didn't
13 have the authority to, you know, mandate certain
14 practices that were happening in Mr. Martinez's office;
15 the unit executive has that. And so if Mr. Martinez
16 was not part of the process, then it would be difficult
17 to find somebody with authority that could make those
18 changes that the plaintiff wanted.

19 Q And -- okay.

20 MS. SUK GERSEN: So can we go to Tab 21.

21 We are marking this Exhibit 7.

22 (Plaintiff's Exhibit 7 marked.)

23 BY MS. SUK GERSEN:

24 Q I wanted to direct you to the date, which is
25 January 13th, 2019.

1 A Okay.

2 Q So you say to Heather, the investigator --
3 or, sorry. Heather says to you --

4 A Uh-huh.

5 Q Heather, the investigator, says to you, "I
6 truly believe Tony is biased in this case concerning JP
7 and Caryn as far as sexual harassment is concerned.
8 From my conversations with him, I know he feels Caryn
9 is attempting to exploit the situation to get the
10 transfer to Asheville. However, it has created a bias
11 in him to look at this from a neutral perspective. I
12 am concerned he could cause more damage if he were
13 involved in the process at this point."

14 And she also describes Caryn's request that
15 Tony be disqualified as she felt she was retaliated
16 against after she submitted her claim of wrongful
17 conduct.

18 What did you understand Heather to be
19 saying?

20 MR. KOLSKY: Objection. Overbroad.

21 BY MS. SUK GERSEN:

22 Q You can answer the question.

23 A Well, I mean, I would interpret this to mean
24 that she -- Ms. Beam is expressing the concern that
25 Mr. Martinez, you know, has a biased view about this in

1 terms of not being able to see it from the plaintiff's
2 point of view in a fair and impartial manner.

3 Q So did you agree with that characterization?

4 A Well, that -- I'm not sure -- I'm trying to
5 think about how I responded at the time, or what I
6 thought about at the time.

7 Yeah. I can't remember what my thoughts
8 were at the time, but, in -- you know, I don't address
9 it in my response back to her.

10 No. Go ahead.

11 Q You go ahead.

12 A No. I -- it's just that I just -- I can't
13 remember what my impressions were when I had read that.

14 Q Did you think that she was saying that Tony
15 was not able to see it from Ms. Strickland's point of
16 view or not able to see it in a fair and impartial
17 manner?

18 A Well, I guess when I -- reading this now, it
19 looks like that Mr. Martinez has, you know, an
20 impression about why this -- why Plaintiff brought
21 these, and so reading this, it looks like Heather Beam
22 is saying that Mr. Martinez may have already concluded
23 why Plaintiff brought this.

24 Q And was that because he was a person who was
25 accused of violating the EDR plan?

1 MR. KOLSKY: Objection. Lacks foundation.

2 BY MS. SUK GERSEN:

3 Q So do you believe that she was saying he was
4 not fair and impartial in this with respect to
5 Ms. Strickland's matter?

6 A Again, reading this, it would seem like
7 Mr. Martinez had formed views about why the plaintiff
8 had brought these allegations.

9 Q Do you remember what you did in reaction to
10 this e-mail?

11 A I mean, I don't -- I don't recall what I
12 did, but it looks like I had a follow-up conversation
13 with the investigator. But I don't quite -- I don't
14 remember that conversation.

15 Q This person was the person you selected to
16 be an independent and neutral investigator?

17 A Uh-huh.

18 Q And she was telling you that Mr. Martinez
19 was truly biased. She truly believed Tony was biased
20 in this case?

21 A That's what she said, yes.

22 Q Did you talk to Chief Judge Gregory about
23 Heather Beam's conclusion about Tony's bias?

24 A Again, I'm not quite sure what I did after
25 this e-mail.

1 Q Ms. Strickland had -- Ms. Strickland had
2 requested that Tony be disqualified; is that correct?

3 A Yes. At different stages, yes.

4 Q So you don't remember meeting or talking to
5 Chief Judge Gregory about Heather Beam's conclusion
6 about Tony's bias?

7 A I don't remember what happened after this
8 exchange.

9 Q At the -- can we look at the top of the
10 e-mail, please.

11 A Uh-huh.

12 Q It says, "Thanks, Heather. Well said. Kim
13 and I have a meeting tomorrow with Chief Judge Gregory
14 at 2 p.m."

15 Does that refresh your recollection about
16 whether you spoke with Chief Judge Gregory?

17 A Well, I'm not even sure, reading my
18 response, that the meeting I had with Chief Judge
19 Gregory and Kim Llewellyn had anything to do with this
20 case.

21 Q Is it possible you took no action in
22 response to receiving this e-mail from the
23 investigator?

24 A Again, because I can't remember what
25 happened, I suppose it's possible.

1 Q Is there anything that could refresh your
2 recollection about what you did after receiving this
3 e-mail in response to it?

4 A I guess if there were e-mails or notes, but
5 you know, I mean, there were just so many messages and
6 so many e-mails, it's -- it was just hard to keep
7 track.

8 Q So I understand you to be saying it's
9 possible that you understood that the investigator
10 thought Tony was biased and that you did not do
11 anything about that.

12 A Again, because I don't remember what
13 happened after that, I will concede it's possible.

14 Q Do you remember taking any notes or sending
15 any e-mails in response to this e-mail from Heather
16 other than what we see here?

17 A No. Again, I don't -- I don't remember.

18 Q Okay. Was Tony Martinez disqualified in any
19 way?

20 A He was -- he was not.

21 Q And so if he -- given that you're saying he
22 was not disqualified, what did that mean in terms of
23 his authority to act on the investigative report?

24 A So I'm not -- I'm not clear what you're
25 asking about, Tony's authority in light of the

1 happened after this exchange. Certainly I could see
2 raising that as part of his deliberations.

3 Q So you said before that Chief Judge Gregory
4 denied the request for qualification.

5 A That's correct.

6 Q So given that Tony was not disqualified,
7 what role was he tasked with performing after the
8 investigative report?

9 A Well, if I remember correctly, this was --
10 it was either at the close or close to the end of the
11 counseling period or at the beginning of the mediation
12 period, and so Tony's role would have been -- as the
13 unit executive of the office, he would have been in the
14 position to, you know, see what he could do to address
15 Plaintiff's concerns about, you know, promotion, the
16 work conditions, and so on and so forth.

17 Q And he had that role because he was the unit
18 executive?

19 A Who had the authority to do that, yes.

20 Q Would you normally ask someone that the
21 investigator thought was biased to participate in those
22 roles?

23 A Well, again, there -- you know, biased in
24 terms -- I mean, I'm struggling to answer that because
25 as the unit executive, he has to make decisions that he

1 feels is in the best interest of not only the employee
2 but the office and other colleagues, and so he may have
3 to take -- he or she may have to take action that
4 people disagree with, and, you know, he could be
5 accused of being biased against the individual
6 employee.

7 MS. SUK GERSEN: Would you please read out
8 Mr. Ishida's previous answer. Not this one but the one
9 before.

10 (Requested record read by the stenographer.)

11 MS. SUK GERSEN: Which exhibit is Tab 1? Do
12 you remember?

13 MR. GERSEN: What's the Bates number?

14 MS. SUK GERSEN: Bates Number 615.

15 MR. KOLSKY: That's Exhibit 2.

16 BY MS. SUK GERSEN:

17 Q Do you have Exhibit 2 there, Mr. Ishida?

18 A I think I do. Yes, I do.

19 Q At the top of the page in the first -- in
20 the paragraph that's an e-mail from you to
21 Mr. Martinez --

22 A Okay.

23 Q -- I'd like to point you to the sentence
24 starting with "You're doing."

25 A Okay.

1 Q "You're doing all you can to protect Caryn."
2 So what did you mean by that? What did you
3 mean when you said, "You're doing all you can to
4 protect Caryn"?

5 A Well, so I think -- I think part of
6 Mr. Martinez's concern was he had taken -- once he
7 received the concerns about sexual harassment the
8 plaintiff made against JP Davis, Mr. Martinez had
9 asked, "Okay" -- he did X, Y, and Z, and I think what
10 he asked me too was, "Can you think of anything else I
11 need to do?"

12 And my response is, "Well, I think, to me,
13 it appears like, you know, you've taken the appropriate
14 steps to protecting the plaintiff from JP Davis."

15 Q What were the appropriate steps?

16 A As I recall, it was physical separation. He
17 had allowed Plaintiff to telework, and he had
18 removed -- or he said he had removed the plaintiff from
19 JP's chain of command.

20 Q Why did you think that Ms. Strickland needed
21 protection?

22 A Because she had told me on a number of
23 occasions she was afraid of Mr. Davis, and I think -- I
24 remember at least one time where she said, "I'm
25 physically afraid of him."

1 Q Did you believe her?

2 A I had no reason to doubt her, and she
3 seemed -- if I recall, she seemed very upset, so I took
4 her at her word.

5 Q So taking her at her word, you felt that she
6 needed protection?

7 MR. KOLSKY: Objection. Misstates
8 testimony.

9 BY MS. SUK GERSEN:

10 Q Did you believe she needed protection?

11 A I believed that she had felt that she was
12 physically threatened by JP Davis.

13 Q And you believed her?

14 A Again, yes. I had no reason to doubt her.

15 Q Is there any special provision in the EDR
16 plan that applies if a unit executive is the person who
17 is alleged to be a violator of the EDR plan?

18 A Say that again. I'm sorry.

19 Q Is there any provision in the EDR plan that
20 would apply in the circumstance where a unit executive
21 is themselves alleged to have violated the EDR plan?

22 A So the EDR plan would apply to unit
23 executives equally.

24 Q So does that mean that the unit executive
25 would be the person in charge of responding to an

1 allegation of his or her own violation of the EDR plan?

2 A Again, I'm -- you know, forgive me. I'm not
3 sure what you're asking me and in what -- and in what
4 period, and what's the context?

5 Q Is your position that the unit executive
6 cannot be removed from playing the role in the EDR
7 process that the EDR plan envisions because they alone
8 have power to act under the EDR plan for personal
9 actions -- personnel actions?

10 MR. KOLSKY: Object to form.

11 BY MS. SUK GERSEN:

12 Q You can answer.

13 A Yeah. I'm sorry. You're going to have to
14 ask me that again.

15 Q I guess what I'm trying to ask you is, if
16 the unit executive is the person who is accused of
17 violating the EDR plan --

18 Right? You understand so far?

19 A Uh-huh. Uh-huh.

20 Q -- is your view that that person should not
21 be disqualified?

22 A Just because -- on the basis that he or she
23 is alleged to have ...

24 Q Yes. That is my question.

25 Shall I clarify?

1 A No. I'm actually -- I'm actually thinking
2 about that.

3 Well, I think it depends on the context and
4 the allegations made against the unit executive.

5 Q Could you tell us more about how it depends
6 on the context --

7 A Okay. So --

8 Q -- and the allegations?

9 A Okay. So, for example, let's say -- let's
10 say an employee makes an allegation that "The unit
11 executive is being unfair because," you know, "the unit
12 executive did not promote me."

13 Okay. In that case, under that
14 hypothetical, personally -- and if it's happening at
15 the -- you know, the informal counseling, mediation
16 stage, personally, under those set of facts, I would
17 not see the need to disqualify the unit executive.

18 Q What about in a circumstance where the unit
19 executive were accused of sexual harassment or sex
20 discrimination?

21 MR. KOLSKY: Objection. Calls for
22 speculation.

23 BY MS. SUK GERSEN:

24 Q You can answer.

25 A Well, again, I think -- I think what I said

1 before is, I think it depends on the context and what
2 the allegations are.

3 Q I understand, and that's -- and you provided
4 an example to give us a sense of the context. So I'm
5 providing you with another example and another context
6 to get your view. And so let me reask the question.

7 A Uh-huh.

8 Q In the context where you have -- let's just
9 make it really specific -- quid pro quo sexual
10 harassment allegations about a unit executive and
11 hostile environment, sexual harassment, or sexual
12 discrimination, or an allegation of deliberate
13 indifference, would you say that the unit executive
14 being alleged -- or being alleged to have committed
15 those acts should not be disqualified --

16 MR. KOLSKY: Same objection.

17 BY MS. SUK GERSEN:

18 Q -- from the EDR process?

19 You can answer.

20 A Yeah. You know, again, you know, it's
21 difficult to answer, to provide an absolute, because,
22 you know, it really does depend on the specific facts
23 of the case and the context in which it's alleged.

24 Q Let me make it specific. Quid pro quo
25 sexual harassment. A unit executive accused of

1 quid pro quo sexual harassment should be disqualified
2 from playing the normal role of a unit executive in a
3 EDR proceeding. Yes or no?

4 A In the early stages of the EDR proceeding?

5 Q I'm talking about after an investigative
6 report has been completed and in the counseling and
7 mediation processes. You have testified that the unit
8 executive is normally involved.

9 A That's correct.

10 Q If that unit executive were accused in the
11 actual EDR matter of sex discrimination, or to be even
12 more specific, quid pro quo sexual harassment, would
13 you consider it appropriate to disqualify that person?

14 MR. KOLSKY: Objection. Calls for
15 speculation. And object to form.

16 BY MS. SUK GERSEN:

17 Q You may answer.

18 A Well, again, I think it's -- it's difficult
19 to answer that because there's a lot of nuances. And,
20 again, I will just say that one of the reasons why we
21 waited to decide -- or to have Chief Judge Gregory
22 decide the motion for disqualification is we wanted to
23 see the investigation report to see, you know, what the
24 investigator's findings and conclusions were.

25 I mean, let's just take -- let's -- you

1 know, let's take a hypothetical. Suppose, you know,
2 she did sustain -- let's, you know, just say -- suppose
3 she -- there were allegations like what you described,
4 and suppose the investigator did say, "Oh, yes.
5 Absolutely. I found evidence of that." Well, that
6 could -- I could see that swaying the decision to
7 disqualify the unit executive.

8 On the flip side, if the investigation
9 report said, "Well, I don't" -- "I could find no
10 evidence to substantiate that," then it would swing the
11 other way.

12 So it's really difficult to answer your
13 question. I don't mean to be difficult, but it's a
14 really nuanced question.

15 Q I do understand it's a nuanced question, and
16 that is why I'm asking you, because you are the -- you
17 were the EDR Coordinator with the experience and the
18 expertise.

19 Would it be proper for a person who was
20 alleged to have violated the EDR plan, for example,
21 sexual harassment, to be the judicial officer at the
22 end of the final -- in the final complaint stage of a
23 Chapter X proceeding?

24 A I'm sorry. I wasn't tracking. You're
25 asking me about the qualifications of the judicial --

1 Q Yeah. The presiding judicial officer at the
2 end of the Title X proceedings --

3 A Uh-huh.

4 Q -- would it be proper for that person who is
5 playing that role to be the same person who is accused
6 of violating the EDR plan in that very case?

7 A In that very case?

8 Q Yes.

9 A No, I would not think that would be
10 appropriate.

11 Q The report that Ms. Beam prepared found that
12 Mr. Martinez had mishandled Ms. Strickland's EDR
13 complaint.

14 A Uh-huh. Uh-huh.

15 Q And then Heather Beam further alleged that
16 Tony was biased or found -- she concluded that Tony was
17 biased in the e-mail that she sent you.

18 A Right. But I don't -- I don't think that
19 she said that in her report.

20 Q She recommended disqualification to you; is
21 that right?

22 A That's the way I would read her e-mail, yes.

23 Q If, in that circumstance, there is no
24 disqualification of the unit executive, what is a
25 situation where you might think a disqualification is

1 important? Is there any situation where a
2 disqualification would be appropriate?

3 A Well, again, I would -- I would go back to
4 what I had said before.

5 Q I appreciate that, but I'm not asking for
6 what you said before. I'm asking you a different
7 question.

8 A Because it sounds like the same question, so
9 I apologize if I'm mishearing you.

10 Q In a situation where the investigator found
11 that Tony was biased and she recommended
12 disqualification of the person who was accused of an
13 EDR violation, you found -- or you did not feel that
14 disqualification was appropriate; is that right?

15 MR. KOLSKY: Objection. Misleading.

16 BY MS. SUK GERSEN:

17 Q Based on the investigative report, did you
18 think that disqualification was merited?

19 A You're asking my opinion?

20 Q I'm asking your opinion.

21 A Based on the report itself, no, I did not
22 think disqualification was merited.

23 Q Can you think of any situation at all where
24 disqualification would be merited with an allegation of
25 sexual harassment against a unit executive?

1 MR. KOLSKY: Objection. Calls for
2 speculation.

3 BY MS. SUK GERSEN:

4 Q You can answer.

5 A Well, again, I mean, I'm just -- like I said
6 before, had the investigation report concluded that the
7 unit executive -- there was evidence to substantiate
8 the allegations of sexual harassment, substantiate
9 allegations of retaliation, I could see in that
10 particular circumstance that there would be stronger
11 reasons to support disqualification.

12 Q Why did Tony Martinez take action against
13 JP Davis in response to this report?

14 MR. KOLSKY: Objection. Lacks foundation.

15 BY MS. SUK GERSEN:

16 Q We know from the discovery in this case that
17 Tony was in charge of taking action against JP Davis,
18 namely, disciplining him. Why was Tony the one who had
19 that role?

20 A Well, he would have that role as the unit
21 executive of this office.

22 Q And your view is that it was appropriate for
23 him to have that role in this case?

24 A Yes.

25 Q And your view is that it was appropriate for

1 him to have that role even though he was alleged to
2 have violated the EDR plan in connection with JP?

3 MR. KOLSKY: Objection. Misleading.

4 BY MS. SUK GERSEN:

5 Q You can answer.

6 A Well, again, as the unit executive, that is
7 within his or her purview to take such action
8 against -- against one of his or her employees.

9 Q Did Tony take action against himself?

10 A I'm not sure I know what you mean.

11 Q The investigative report found wrongdoing on
12 the part of Tony Martinez.

13 A Well, I wouldn't call it wrongdoing.

14 MR. KOLSKY: Object to counsel's testimony.
15 Object to form.

16 MS. SUK GERSEN: We can look at the report.

17 BY MS. SUK GERSEN:

18 Q Do you have the report in front of you,
19 Mr. Ishida?

20 A Yes. Exhibit 8?

21 Q Yes.

22 A Yes.

23 Q Exhibit 8. This is page 11 of the report.

24 A Okay.

25 Q US-1254.

1 A Okay.

2 Q What do you understand Ms. Beam to be
3 finding here with respect to Mr. Martinez?

4 MR. KOLSKY: Objection. Vague.

5 BY MS. SUK GERSEN:

6 Q Is your view that Ms. Beam found no
7 wrongdoing on the part of Mr. Martinez?

8 A So from my reading of the report, what
9 Heather Beam said was she found no evidence of
10 retaliation, and she found no evidence to support
11 Plaintiff's allegation of sexual harassment.

12 Q What was your understanding of why Ms. Beam
13 said on page 14 of that report, "Mr. Martinez," in all
14 caps, "must also be counseled and trained"?

15 A Well, if I remember the passages of the
16 report, while she found that there was nothing to
17 substantiate the claims of retaliation or sexual
18 harassment, she did point out certain, you know -- and
19 I'll use her term -- mishandling of Plaintiff's
20 complaint and concerns.

21 And so Ms. Beam said that, you know, these
22 mishandlings contributed or exacerbated the situation.
23 And so my reading of the report is that she wanted that
24 to be addressed with Mr. Martinez so that he understood
25 what the consequences of this mishandling was. But she

1 also wanted to make sure going forward that these types
2 of things wouldn't happen again. That's the way I read
3 her conclusions there.

4 Q Her conclusion that Tony mishandled
5 Ms. Caryn Strickland's case, did you consider that to
6 be a finding of wrongdoing?

7 A No. I considered them mistakes, missteps,
8 because the plaintiff's more serious allegations of
9 retaliation and sexual harassment, she did not find any
10 evidence to support that.

11 Q What is the difference between mistakes and
12 missteps versus wrongdoing?

13 A You're asking me --

14 Q Yes, I am.

15 A -- for my thoughts?

16 Q Yes, because you -- because of the way you
17 answered the previous question.

18 A Well, in this case, the missteps were that
19 Tony had done these things well intended, but, you
20 know, he -- you know, he had done it inadvertently,
21 without intention. He had done it -- he had done it,
22 you know, in good faith in trying to address
23 Plaintiff's concerns. Whereas wrongdoing, I would just
24 say that there's a certain element of intention there.

25 Q According to this report by Ms. Beam, had

1 individual?

2 A Well, Heather -- so I wanted Heather to
3 investigate, you know, the circumstances in these
4 proceedings. I did not want to be seen directing it in
5 any way or influencing it or anything like that. I
6 mean, it was -- once she was appointed, then, you know,
7 it was her job to conduct the investigation as she saw
8 fit, and I didn't want to know, and I didn't want to be
9 involved in that process.

10 Q Wasn't it your job to ensure that the
11 investigations are fair and thorough?

12 A Yes, which is why I did not want to, you
13 know, be seen as influencing it or -- you know, I
14 wanted to let it take its course, and I wanted the
15 investigator to conduct the investigation as she saw
16 fit.

17 Q So if what she saw fit was to show the
18 report to the accused party, you didn't want to know?

19 A Again, I did not want to know how she
20 conducted her investigation.

21 Q It seems from your answers previously that
22 as EDR Coordinator you were concerned about preserving
23 the integrity of the investigation. Am I right?

24 A Yes.

25 Q Wouldn't the question of whether the

1 investigator showed the report's findings or discussed
2 them with an accused party be concerning when it comes
3 to preserving the integrity of the investigation?

4 A Well, again, I don't know if that happened,
5 and if it did, I don't know the reason why Heather
6 would have done that. So I'm hardly qualified to pass
7 judgment on that.

8 Q And is it your testimony that you didn't
9 want to know?

10 A Yes. I wanted Heather to conduct her
11 investigation without any direction from me, and I
12 wanted to allow her to develop the investigation as she
13 saw fit.

14 Q So you had several contacts from JP, and you
15 said today that you were worried that the investigation
16 be conducted with integrity; is that right?

17 A Yes.

18 Q So would you not be concerned if JP or Tony
19 Martinez repeatedly contacted Heather Beam with queries
20 similar to the ones that JP made to you?

21 A Well --

22 MR. KOLSKY: Objection. Vague and calls for
23 speculation.

24 BY MS. SUK GERSEN:

25 Q Did you ask Heather if Tony or JP contacted

1 her?

2 A No. And, again, I did not ask her questions
3 about how she was conducting the investigation or what
4 was happening during the course of that investigation.

5 Q You were deeply worried about preserving the
6 integrity of the investigation --

7 A Right. Which would --

8 Q -- is that right?

9 A Which would include not, you know -- or
10 being perceived as steering the investigation or
11 dictating its course.

12 Q Would that concern not be important if
13 Heather had been contacted by JP during the
14 investigation?

15 MR. KOLSKY: Object to form.

16 BY MS. SUK GERSEN:

17 Q If the investigator were behaving
18 improperly, would you want to know?

19 A If the investigator was behaving improperly?

20 Q During the investigation.

21 A Improperly how?

22 Q If the investigator were behaving improperly
23 with respect to not preserving the integrity of the
24 investigation, is that something you'd want to know?

25 A Well, again, maybe give me an example of

1 what you mean by behaving improperly.

2 Q Did you tell Heather that JP contacted you?

3 A I can't remember if I told that to Heather
4 or not.

5 Q Did you tell the Chief Judge that JP was
6 contacting you outside of the EDR proceedings?

7 MR. KOLSKY: Objection. Misstates
8 testimony.

9 BY MS. SUK GERSEN:

10 Q I'm asking the question. Did you tell the
11 Chief Judge that JP was contacting you about the EDR
12 proceedings?

13 A I can't remember if -- if I let Judge
14 Gregory know. Again, I had had a conversation with JP,
15 and I had a -- I alerted Mr. Martinez. Beyond that, I
16 don't recall.

17 Q So if JP repeatedly contacted Heather about
18 the investigation while it was ongoing, is that
19 something that would worry you?

20 MR. KOLSKY: Objection. Calls for
21 speculation.

22 THE WITNESS: I would trust that Heather
23 would handle that appropriately.

24 BY MS. SUK GERSEN:

25 Q Am I right that you had a conversation with

1 JP about his contacting you?

2 A Yes. That's -- yes.

3 Q So he -- it wasn't just conversation over
4 e-mail; is that right?

5 A Well, again, I can't remember if I called
6 him or if I sent him an e-mail.

7 Q What was your conversation with JP?

8 A Well, again, it was -- I was concerned about
9 him reaching out to me. I told him my concern, and I
10 asked him not to contact me again.

11 Q Okay. Just before, you said that you would
12 trust that Heather, the investigator, would handle it
13 appropriately.

14 A Uh-huh.

15 Q What does that mean, to handle it
16 appropriately?

17 A Just that, that, you know -- suppose --
18 suppose Mr. Davis had asked a question about -- you
19 know, a procedural question. "Am I" -- you know, "Are
20 you going to interview me again?" or, you know, "When
21 is the next time" -- you know, things like that. I
22 could see where Heather would feel comfortable in
23 talking to Mr. Davis and answering his question.

24 But if it was an attempt to frame the issues
25 or -- I don't know. I mean, you know, something where

1 Mr. Davis was trying to influence the outcome of the
2 investigation, you know, I have full confidence that
3 Heather would have said, "That's improper" and "Please
4 don't do that."

5 Q So the -- who would be the appropriate
6 response of Heather to that kind of behavior?

7 MR. KOLSKY: Objection; calls for
8 speculation.

9 THE WITNESS: Yeah. I mean, it depends on
10 the context.

11 BY MS. SUK GERSEN:

12 Q Okay. One question I had about the Title --
13 the Chapter IX versus Chapter X that you described
14 before, there are two separate procedures; is that
15 right?

16 A Yes. They're -- they can come from the same
17 set of facts, but they're very different processes and
18 procedures.

19 Q Does Chapter IX have to come in any order?
20 Does it have to come before Chapter X or after
21 Chapter X?

22 A No. The plan doesn't prescribe kind of an
23 order of what comes first. I think the plan gives a
24 lot of flexibility.

25 Q So the plan -- according to the plan, they

1 about why they think that's the case.

2 And so in Mr. Martinez's case, we got a
3 range of comments on his request for reappointment.

4 Q Would you say that the comments were largely
5 positive or negative?

6 A Again, I don't remember all of them. I
7 would say -- but I think it's fair to say there was a
8 mix of positive and adverse comments.

9 Q Did some of those comments involve comments
10 about Mr. Martinez's handling of discrimination
11 complaints?

12 A I recall that we had received a number of
13 comments that discussed EDR matters involving the
14 particular commentator.

15 Q Was JP Davis demoted after the EDR matter
16 concluded in Ms. Strickland's case?

17 A I don't know -- I didn't know what action
18 Mr. Martinez took against Mr. Davis, and, frankly, that
19 wasn't our concern.

20 Q That wasn't your concern?

21 A Well, it wasn't our concern in the sense
22 that we had no authority to take any action against
23 Mr. Davis. That is the purview of the unit executive.

24 Q Could Chief Judge Gregory have disciplined
25 JP Davis?

1 A No. And we had discussion about that.

2 Q What were those discussions about?

3 A I can't -- I can't remember if we had
4 reached out to General Counsel on this as well, but I
5 do recall that it was Judge Gregory's sense that he did
6 not have the authority to discipline a subordinate in
7 Mr. Martinez's office.

8 Q Did Chief Judge Gregory have authority to
9 discipline Mr. Martinez?

10 A I think -- I think we felt that the Court of
11 Appeals, as the appointing entity, had that ability.

12 Q And when you say "we felt," who do you mean
13 by "we"?

14 A So Judge Gregory and I discussed this. That
15 was Judge Gregory's view, and I concurred with that.

16 Q And just to be clear, you are saying it was
17 Judge Gregory's view and you concurred that Chief Judge
18 Gregory could discipline Mr. Martinez but did not have
19 authority to discipline JP Davis; is that right?

20 A I think that's fair to say.

21 Q Does the Court of Appeals exercise any
22 authority over the Federal Defenders Office?

23 A Aside from the Defender, none that I'm aware
24 of.

25 Q So when you say "aside from the Defender,"

1 are you talking about his appointment?

2 A Well, again, as -- the Court of Appeals, as
3 the appointing body, has -- there's a number of things
4 that the court can do to the Defender but not anyone in
5 the Defender's office.

6 Q I see. So the court cannot discipline
7 anyone in the Federal Defenders Office?

8 A I'm not aware of any authority that would
9 give the court that ability.

10 Q And to be clear, the only person who could
11 discipline an employee of the Federal Defenders Office
12 is Mr. Martinez?

13 A As the unit executive.

14 Q As the unit executive.

15 A That's correct. That's my understanding.

16 Q To be clear, is the FDO part of the federal
17 judiciary and not the executive branch?

18 A Yes. They're -- they are considered
19 a judiciary -- federal judiciary entity.

20 Q Are you aware that JP Davis is no longer the
21 First Assistant at the FDO?

22 A I think I had heard that.

23 Q You heard that he was no longer the First
24 Assistant?

25 A Yes.

1 Q Do you know why?

2 A I don't know why.

3 Q Subsequent to the Strickland matter being
4 resolved, have there been subsequent complaints about
5 Tony Martinez?

6 A I'm aware generally that there were other
7 complaints after Caryn Strickland's case.

8 Q Are you aware of those complaints happening
9 while you were the EDR Coordinator?

10 A No. I think by this time, I was not the EDR
11 Coordinator, and we had a Director of Workplace
12 Relations that was working with a number of these
13 individuals.

14 Q What about against JP Davis? Subsequent to
15 Ms. Strickland's EDR matter, were there any complaints
16 against JP Davis?

17 A I don't -- I don't recall anything, but,
18 again, not -- it wasn't too much longer after that that
19 I was not the EDR Coordinator. And, again, we had a
20 Director of Workplace Relations who handled these types
21 of things.

22 Q At the beginning of today, at the beginning
23 of the testimony, you mentioned two to three matters --

24 A That I am familiar with, yes.

25 Q -- that you're familiar with --

1 A Yes.

2 Q -- regarding JP Davis or Tony Martinez.

3 A I'm aware of two or three -- I think what I
4 said was I'm aware of two or three involving the office
5 of Mr. Martinez. I don't think I said that there were
6 any involving Mr. Davis.

7 Q Were you, at any point during
8 Ms. Strickland's complaint and proceeding, concerned
9 about a pattern of complaints against JP Davis or
10 Mr. Martinez?

11 A Well, I think -- I think I was concerned
12 about that. There were multiple coming within a
13 relatively short period of time, so I remember being
14 somewhat concerned about that.

15 Q What were your concerns?

16 A Well, mainly, you know, if -- you know, why
17 are there multiple complaints coming in such a short
18 period of time? I mean, what does this mean?

19 Q Did you do anything about that concern?

20 A Well, we wanted to, you know, certainly look
21 at why these -- you know, why these individuals were
22 bringing these, you know, complaints, and we
23 certainly -- we didn't want to prejudge anyone or, you
24 know, the office, but we wanted to make sure that we
25 looked at, you know, each of the complaints as they

1 were brought to us.

2 Q Did you speak with Chief Judge Gregory about
3 the concern you just mentioned?

4 A Well, again, in my role as the EDR
5 Coordinator, whenever I get, you know, like, say, a
6 Chapter IX or Chapter X, I would always let him know
7 that this is a -- "Chief, by the way, this is what" --
8 "I received this complaint or this request" -- "this
9 report of wrongful conduct." So I would let him know
10 every time I received one what would happen.

11 Q So you testified just now that you were
12 concerned about a potential pattern with respect to
13 Chief Judge -- sorry -- let me start again.

14 You testified that you were concerned about
15 a potential pattern regarding JP Davis or Mr. Martinez.

16 A No. I don't think that's accurate to say
17 what I meant. What I said was, I was concerned that
18 there were a number of these complaints filed in such a
19 short period of time. I don't -- I never mentioned
20 pattern.

21 Q So given the short [sic] number of
22 complaints filed in a short period of time and your
23 concern about it, did it worry you that Mr. Martinez
24 would remain in charge of any complaints brought
25 against him?

1 practical effect of what that would mean to the
2 proceeding if Mr. Martinez was no longer part of the
3 process and no longer was representing the office.

4 Q And what practical effect are you referring
5 to?

6 A Who would be negotiating for the office, you
7 know, to address the plaintiff's concerns.

8 Q Was there an understanding of who would be
9 negotiating for the office if Mr. Martinez was
10 disqualified?

11 A I'm sorry. The first part, Josh?

12 Q Did Chief Judge Gregory express an opinion
13 about who, in fact, would negotiate on behalf of the
14 office if Mr. Martinez was disqualified, or did he not
15 have an understanding of who that would be?

16 A Well, I don't think he had an understanding,
17 because if he had granted the request to disqualify
18 Mr. Martinez, you would obviously look to the next in
19 command, and JP Davis was the First Assistant, who he
20 would not have appointed Mr. Davis.

21 So then that left -- well, then who else in
22 the office would have the authority to participate in
23 the informal resolution process? So the short answer
24 is, we couldn't -- I mean, we talked about that, and we
25 couldn't come up with anybody suitable to represent the

1 office.

2 Q You testified earlier that Chief Judge
3 Gregory didn't have authority to discipline a
4 subordinate in the Federal Defenders Office. Do you
5 recall that testimony?

6 A Yes.

7 Q Does a presiding judicial officer have the
8 authority to order remedies against a Federal Defenders
9 Office after a formal hearing under Chapter X of the
10 EDR process?

11 A Yes.

12 Q Did Tony Martinez ever suggest to you that
13 you should select Heather Beam as the investigator for
14 Ms. Strickland's EDR matter?

15 A No. That was a decision that was made by
16 me, again, after I consulted with Frank Johns and Kim
17 Llewellyn.

18 MR. KOLSKY: Thank you. No further
19 questions.

20 MS. SUK GERSEN: Thank you. I think we're
21 all done.

22 (Deposition concluded at 5:47 p.m.)

23 (Signature reserved.)

24

25

* * * * *

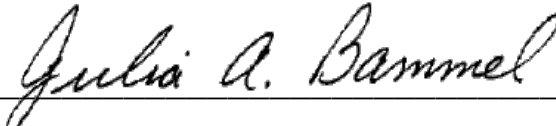
1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Julia A. Bammel, RPR, CSR, Notary Public
3 in and for the Commonwealth of Virginia at large, and
4 whose commission expires May 31, 2024, do certify that
5 the aforementioned appeared before me, was sworn by me,
6 and was thereupon examined by counsel, and that the
7 foregoing is a true, correct, and full transcript of
8 the testimony adduced.

9 I further certify that I am neither related
10 to nor associated with any counsel or party to this
11 proceeding nor otherwise interested in the event
12 thereof.

13 I further certify that the deponent's right
14 to review the transcript was reserved.

15 Given under my hand and notarial seal at
16 Charlottesville, Virginia, this 24th day of April,
17 2023.

18 
19 _____

20 Julia A. Bammel, RPR, CSR

21 Notary Public Registration No. 7205414

22 Commonwealth of Virginia at Large

23

24 Job No. 49661

25

DEPOSITION ERRATA SHEET

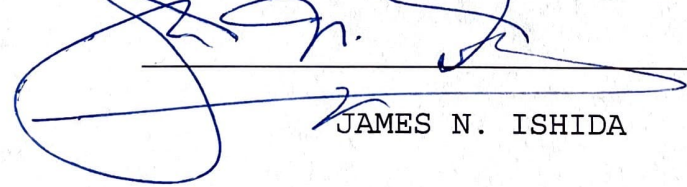
Job No. 49661

Case: Strickland v. United States of America, et al.

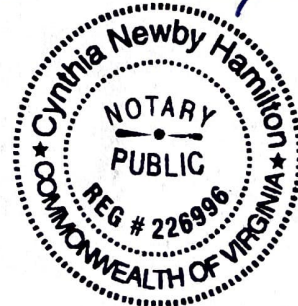
Deposition Date: April 13, 2023

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the captioned matter, or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the 22nd day of May, 2023.
JAMES N. ISHIDASigned to and sworn before me this 22nd day of May,
2023, in Roanoke, VA.

Notary Public

My commission expires: 8-31-2026, 20 Notary Public Registration No. 226996

DEPOSITION ERRATA SHEET

Page No. 22 Line No. 25 Change to: _____
"personnel issues, disciplinary issues that had come"

Reason for change: Transcription error

Page No. 72 Line No. 22 Change to: _____
"Chief Judge and the unit executive must be notified."

Reason for change: Transcription error

Page No. 76 Line No. 7 Change to: _____
"so I think there is an encouragement to"

Reason for change: Transcription error

Page No. 77 Line No. 11 Change to: _____
"of a verb. A report of wrongful conduct is --"

Reason for change: Transcription error

Page No. 93 Line No. 23 Change to: _____
"Practices Officer. I couldn't tell you exactly."

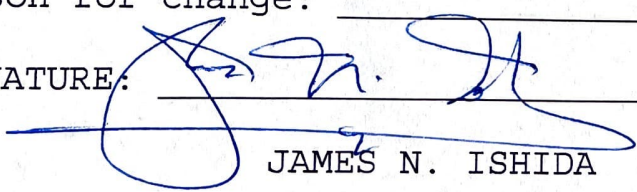
Reason for change: Transcription error

Page No. 96 Line No. 13-14 Change to: _____
"It appears that the head of the AO's Fair"

Reason for change: Transcription error

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

SIGNATURE:  DATE: May 22, 2023

JAMES N. ISHIDA